

THE STATE OF NEW HAMPSHIRE

MERRIMACK, ss

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

In Re Liquidator Number: 2007-HICIL-32

Proof of Claim Number: AMBC465096

AMBC464386

INTL277878

AMBC465074

Claimant Name: Century Indemnity Company

Policy Holder Account: Unione Italiana (UK)

RULING

The Home Insurance Company (“Home”) reinsured Unione Italiana (UK) Reinsurance Company Limited (“Unione Italiana”) for certain losses sustained by Unione Italiana under a specific insurance account. This disputed claim proceeding focuses upon two determinations in a quarterly series of claims that have been processed by Century Indemnity Company (“CIC”) ¹ and the Liquidator under the Claims Protocol governing AFIA related claims. The first is a December 21, 2006 determination (“NOD #15”) in the amount of \$556,758, which was approved by Merrimack County Superior Court on March 10, 2007, and the second is a redetermination (“NOD# 16”) issued by the Liquidator on September 21, 2007. In the redetermination, the Liquidator notified Unione Italiana that it was “offsetting” the amount of \$236,740 against NOD # 16 upon concerns that the previous allowance under NOD# 15 was in excess of actual liability. Unione Italiana objected to the adjustment and a dispute proceeding was commenced on November 28, 2007.

Unione Italiana and CIC have briefed the issue of whether the Liquidator possesses the authority to alter the determination of a later claim to correct what appears to be an allowance in excess of actual liabilities on a previous claim. Unione Italiana takes the position that once the value of a claim has been determined and approved by the Court under the procedures outlined in RSA-C:45, the Liquidator has no authority to use a later claim determination as a setoff opportunity to adjust for a perceived inaccuracy in an earlier determination. In voicing its objection, Unione Italiana argues that the claim determinations under consideration in this dispute are governed by the Claims Procedures and the Protocol, neither of which expressly addresses this circumstance. CIC takes a

¹ CIC administers Unione Italiana’s claims against Home on behalf of the Liquidator and Home pursuant to a claims handling protocol approved by the Court on November 12, 2004.

contrary position, and cites RSA 402-C:34, as authority for the Liquidator to take the action to which Unione Italiana so strenuously objects.

The Referee has reviewed RSA 402-C:1 and RSA 402-C:25 and considered the broad powers granted to the Liquidator to achieve the purposes of the New Hampshire Insurers Rehabilitation and Liquidation Act. In that light, it would be illogical to conclude that the Liquidator has no authority to reconsider prior court-approved determinations and take such corrective action as may be necessary to assure that only valid claims and substantiated amounts are allowed. While neither the Claims Procedures nor the Protocol expressly references setoff, the Liquidator's, authority for doing so is clearly articulated under RSA 402-C:34, which provides that "mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off and the balance only shall be allowed.

The Referee next considers the question of whether the Merrimack County Superior Court Order of March 10, 2007 approving Unione Italiana's NOD #15 in the amount of \$556,758, is an obstacle to the Liquidator's exercise of setoff on NOD #16. The Referee concludes that it is not. A review of previously filed reports of claims and recommendations reveals that a number of court-approved allowances have been retrospectively adjusted by the Liquidator to account for overvaluation of a claim. In addition, the caption on the schedules attached to the series of reports of claims and recommendations that are submitted to Merrimack County Superior Court for approval provides the following caveat: "Distributions will be subject to setoff." Finally, and importantly, in instances where the Liquidator's actions are unacceptable to a claimant, a dispute proceeding may be initiated by the claimant.

In light of the Referee's conclusion that the Liquidator has the authority to make adjustments to allowed claims as he may deem necessary and fair, and that the March 10, 2007 Merrimack County Superior Court Order does not foreclose such adjustment, the focus of this dispute proceeding is now upon whether the amount at issue is recoverable under English law. Therefore, the parties shall confirm their previous and preliminary agreement that Colin Edelman is appropriate to serve as the English law expert and shall submit a proposed scheduling order to move this matter along to resolution.

So Ordered.

March 12 2008
Date:


Paula T. Rogers, Referee